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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C.

In The Matter of ) MB Docket No. 04-191  
)  
San Francisco Unified School District )  
)  
For Renewal of License for Station KALW(FM), ) Facility ID No. 58830  
San Francisco, California ) File No. BRED-19970801YA

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FCC-0ALJ RCD

To: Secretary

Attention: Richard L. Sippel, Chief Administrative Law Judge

**SAN FRANCISCO UNIFIED SCHOOL DISTRICT**  
**REPLY BRIEF ON TERMINATION DATE**

1. By *Order*, FCC 04M-36, the Presiding Officer required the exchange of briefs by the parties regarding the Termination Date. On October 27, 2003, each of San Francisco Unified School District ("SFUSD") and the Enforcement Bureau ("Bureau") filed Briefs. SFUSD submitted in its Brief that for Issues 1 and 2 designated in the *HDO*, the Termination Date should be August 1, 1997, the date the renewal application was submitted to the Commission. To the extent that the Presiding Officer deems the *HDO* notice to be sufficient pursuant to 47 U.S.C. Section 503((b)(4), SFUSD submitted that the forfeiture issue would have a Termination Date of August 1, 1997. Lastly, as to the third issue in the *HDO* and the meritorious service issue, SFUSD submitted that the Termination Date should be July 16, 2004, when the *HDO* was released.

2. The Bureau submits that no Termination Date need be set for the issues to be determined in this proceeding. The Bureau asserts in its Brief that “[t]he significant issues in this proceeding focus on possible deceit by SFUSD, first in the above-captioned renewal application which was filed at the Commission on August 1, 1997, and second, in an April 6, 2001, response to a staff inquiry dated February 5, 2001. . . . In addition, the Bureau expects to adduce evidence relative to alleged rule violations. As of now, the Bureau cannot determine with any reasonable certainty when all such violations ceased. Consequently, some of the evidence offered may pertain to events that post-date SFUSD’s April 6, 2001, response already discussed above.”

3. Due process and the Communications Act’s procedural safeguards require certainty as to the time periods at issue in this hearing proceeding. The *Hearing Designation Order* provided that the burden of proceeding as to designated Issues 1 and 2, and the burden of proof with respect to all issues, is upon SFUSD. <sup>1/</sup> Moreover, 47 U.S.C. Section 503((b)(4) requires the specification in the notice of apparent liability of the date of the conduct subject to forfeiture. In order to adequately prepare its direct case in this proceeding, SFUSD must be on notice as to the subject time period for each issue.

4. Furthermore, only that conduct specified in the *HDO* or in an issue added by the Presiding Officer may be addressed at the hearing. <sup>2/</sup> The Bureau references in its Brief the

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<sup>1/</sup> See *In The Matter of San Francisco Unified School District For Renewal of License for Station KALW(FM), San Francisco, California, Hearing Designation Order and Notice of Apparent Liability for Forfeiture*, FCC 04-114 at ¶ 29 (rel. July 16, 2004) (the “*HDO*”).

<sup>2/</sup> See 47 C.F.R. § 1.221 (hearing designation order to include a statement as to the reasons for the Commission’s action, the matters of fact and law involved, and the issues upon which the application will be heard); 47 C.F.R. § 1.229 (motions to enlarge or modify issues within prescribed time periods).

April 6, 2001, response of SFUSD to a staff inquiry dated February 5, 2001. However, that April 2001 response is outside both the timing and the subject matter scope of the issues designated in the *HDO*, which relate to the renewal application certifications made on July 30, 1997, as submitted to the Commission on August 1, 1997. Both the language of the *HDO*'s designated issues, and the text of the Commission's discussion in the *HDO*, refer to the renewal application certifications, and not any later statements. <sup>3/</sup> Nor has a timely-filed motion to enlarge the issues been submitted to encompass later conduct. Consequently, any alleged misrepresentations or lack of candor in statements subsequent to the filing of the 1997 renewal application are not at issue in this case.

5. As to the forfeiture matter, as noted in SFUSD's Brief, the *HDO* did not, contrary to the requirement of 47 U.S.C. Section 503((b)(4), "state the date on which such conduct occurred." Instead, the *HDO* only referred to conduct "which occurred or continued within the applicable statute of limitations." <sup>4/</sup> At best then, the notice of apparent liability given to SFUSD is that it could be liable for forfeiture for the conduct at issue in designated Issues 1 and 2. As

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<sup>3/</sup> See, e.g. *HDO* at ¶¶ 19, 24. For example, at paragraph 19 of the *HDO*, the Commission focuses entirely on the renewal certification: "[I]t appears that the KALW(FM) public inspection file was not complete when the subject license renewal application was signed and filed with the Commission. It therefore appears that SFUSD falsely certified that it had placed all required documentation in the station's public file at the appropriate times in the subject license renewal application. We also believe that, as discussed below, GGPR has raised a substantial and material question regarding whether SFUSD intended to deceive the Commission by making the false certification."

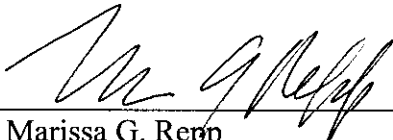
<sup>4/</sup> *HDO* at ¶ 25.


noted in the SFUSD Brief, the conduct at issue in designated Issues 1 and 2 involve the renewal application certifications submitted on August 1, 1997.

6. Due process and the Commission's procedural safeguards require the specification by the Presiding Officer as to the Termination Dates for the issues to be resolved at hearing. With such clarification, the parties will be in a position to adequately prepare their cases in this hearing proceeding.

Respectfully submitted,

**SAN FRANCISCO UNIFIED  
SCHOOL DISTRICT**

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November 2, 2004

### Certificate of Service

I, Regina Hogan, hereby certify that on this 2<sup>nd</sup> day of November, 2004, a copy of the foregoing **San Francisco Unified School District Reply Brief on Termination Date** was sent by hand delivery to:

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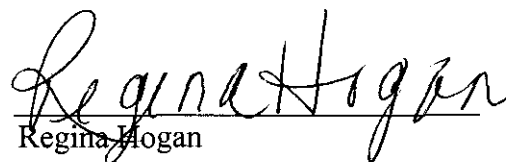
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